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C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 001727

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SUBJECT: CHAVEZ' CONSTITUTIONAL CHANGES: STRATEGIC
DELETIONS AND NEW PRESIDENTIAL POWERS

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Classified By: POLITICAL COUNSELOR ROBERT DOWNES,
REASON 1.4 (D)

¶1. (C) Summary. Local constitutional experts are focusing public attention on the fact that the language President Chavez proposes to delete from the 1999 Constitution is as problematic as the new language he proposes to insert. Chavez' constitutional changes would remove language that promotes municipal autonomy, government accountability and transparency, the political neutrality of the armed forces, and the legal protection of private property. In addition, local media and NGOs are highlighting the additional powers Chavez would obtain through his constitutional revision. Historians are also drawing a parallel between Chavez' constitutional package and former Venezuelan strong men who used similar processes to become "constitutional despots." While Venezuelan opinion-makers are building a strong case that Chavez' constitutional changes are anti-democratic, they also concede that most Venezuelans are still uninterested in the constitutional debate, a situation that distinctly favors Chavez' electoral machine. End Summary.

First You See It, Now You Don't

¶2. (SBU) Well-reasoned criticism of President Chavez' proposals for sweeping constitutional change continues to mount in the independent media, academia, and among NGOs. Constitutional experts are increasingly focusing attention on language the Venezuelan president intends to delete from the 1999 Constitution, not just the new language he plans to insert (reftel). Chavez' current package of constitutional changes would remove key language that promotes accountability and transparency in government, protects the armed forces from politicization, devolves power to municipalities, and ensures the protection of private property.

¶3. (SBU) Government Accountability: Chavez proposes to transform Article 141 of the 1999 Constitution which states that public administration is based on "the principles of honesty, participation, speed, efficiency, transparency, accountability, and responsibility in the performance of public functions." Chavez' proposed new Article 141 simply defines public administration as composed of traditional public bureaucracies regulated by law and the Bolivarian

social missions subject to regulations established by the Executive Branch. Constitutional experts stress that the "gutting" of Article 141 would make it more difficult to hold corrupt public officials accountable. They also note that Chavez' social missions will now enjoy constitutional status without having to become more transparent.

¶4. (SBU) Professional Armed Forces: The Venezuelan president proposes to delete language from Article 328 that protects the professional independence of the armed forces. The existing Article 328 begins, "The National Armed Forces constitute an essentially professional institution, without political affiliation, organized by the state to guarantee the independence and sovereignty of the nation..." Chavez' proposed new Article 328 would replace that language with the following, "The Bolivarian Armed Forces constitute an essentially patriotic, popular, and anti-imperialist body, organized by the state to guarantee the independence and sovereignty of the nation..." Legal experts fear that the proposed change will remove legal barriers to Chavez politicizing the military.

¶5. (SBU) Local Government: Chavez continues to promote his "New Geometry of Power" as giving more power to the people. However, constitutional experts argue that Chavez' proposal to transfer powers from autonomous municipalities to community councils registered and funded by the presidency will concentrate more power in Chavez' hands at the expense of local governments. The existing Article 168 begins "The municipalities constitute the primary political unit of the national organization..." Chavez' proposed new article would retain municipalities, but their role would diminish considerably as a result of Chavez' proposed establishment of the sub-municipal "commune" as the new primary political unit in Venezuela.

¶6. (SBU) Private Property: Chavez emphatically claims that

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his changes to the constitution will not jeopardize private property (reftel). Article 115 currently states that "Property rights are guaranteed. All have the right to the use, possession, enjoyment, and regulation of their property." However, Chavez' proposed new Article 115, which describes several forms of collective property before turning to private property, would define private property simply as goods for "use and consumption" and "legitimately acquired" means of production. Constitutional experts believe this change more narrowly defines private property, noting that there are innumerable categories of private property (e.g. art work) that are not strictly for use and consumption. They also fear that the Chavez-packed court system could interpret the "legitimately acquired" language to justify BRV expropriations.

All Power to the President

¶7. (C) Civil society NGO "Hagamos Democracia" (partially funded by USAID/OTI to carry out watchdog activities related to constitutional reform) and the independent media are publicizing the fact that Chavez' proposals to change Article 236 of the 1999 Constitution would give the Venezuelan president more power, including new authority to:

- coordinate relations between national public bodies;
- name and remove vice-presidents;
- create federal provinces, territories and cities; and,
- promote military officials of all ranks.

¶8. (SBU) In addition, "Hagamos Democracia" notes that Chavez' constitutional reforms would allow him to exercise more powers exclusively, including the ability to:

- manage the national treasury and monetary policy;

-- conclude contracts in the national interest;
-- formulate a national plan for development;
-- grant pardons; and,
-- convoke national referenda,

all without having to consult with his cabinet.

Been There, Done That

¶9. (SBU) Local historians and constitutional experts are also highlighting Venezuela's long tradition of constitution-writing and reforming. Venezuela has had 26 constitutions since declaring independence from Spain in 1811. Legal experts note that only five of the constitutions, including the 1999 Constitution, represent significant changes from the past. They stress that the other constitutions merely represent reforms that concentrated more power in the hands of the executive and solidified "constitutional dictatorships." In addition, they frequently draw a parallel between Chavez and Venezuela's most notorious 20th century caudillo, Juan Vicente Gomez. Gomez used the constitution reform process to dominate Venezuelan government from 1908 until his death in 1935.

¶10. (C) Some of the participants in the Constituent Assembly that drafted the 1999 Constitution tell us the Chavez' proposed changes incorporate ideas that Chavez was originally unable to get adopted. They note that Chavez at that time sought a seven-year presidential term, broader authority to reshape local governments, and more power to assert greater state control over the economy, but did not then have sufficient support to get these ideas codified. Chavez himself boasts that now he is in a position to make these changes. Constituent Assembly veterans tell us that they would expect Chavez to also seek changes at some point to constitutional clauses that enshrine Venezuela's treaty obligations and commitment to international arbitration.

Comment

¶11. (C) Independent media outlets, legal experts, academics, and NGOs are publicizing strong, well-reasoned warnings that President Chavez' proposed constitutional changes concentrate too much power in the executive and further undermine democracy in Venezuela. What is less apparent is whether the

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majority of Venezuelans are listening. The opposition remains divided on whether to participate in the constitutional referendum slated for early December. Would-be opinion-makers concede that most Venezuelans still perceive the constitutional debate as "an argument for lawyers" rather than the crossroads between what remains of social democracy in Venezuela and Chavez' brand of authoritarian socialism. Such an informational vacuum favors the formidable Chavez electoral machine. It also makes it easier for pro-Chavez legislators to make further Chavez-approved changes. National Assembly (NA) President Cilia Flores has already stated that the NA will have to review all the articles of the Constitution, ostensibly to make the revised document internally consistent. Consequently, the opposition still has a lot of attention-grabbing work to do to motivate Venezuelans to oppose Chavez' constitutional changes.

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